

# *Privacy Act at NIEHS*



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# *Why Have a Privacy Act?*



- Constitutional right to privacy
- Affected by collection, maintenance, use and dissemination by Federal agencies
- Use of computers/telecommunications  
(greater distribution = potential for greater harm)

# *Privacy Act of 1974*

*(5 U.S.C. Section 552a, 1988)*

- Limits collection of personal information
- No *secret* Government record systems
- No *secret use* of Government records
- Right to see and correct one's own records
- *Safeguards* for the security and accuracy
- Civil and Criminal remedies

# *When is it a PA Records System?*

- Group of records (more than one)
- Contains information about an individual
- Designed to be retrieved by name or other Personal Identifier



# *Who is Covered by the Privacy Act?*



- U.S. citizens
- Resident aliens

# *Who is NOT Covered?*



- Non-resident aliens
- The deceased

# *Limit Collection of Information*



- Relevant
- Necessary to carry out an Agency function
- Justify Collection of Social Security No.
  - voluntary
  - required to obtain a benefit (e.g., TRANSHARE)
  - mandatory by law
- Inform individual of purpose and use:  
Privacy Act Notification Statement

# *No Secret Government Records*

- Publish a Privacy Act System Notice in the Federal Register 60 days before collecting data
- **System Notice:** brief description of the type of record system and how the Government intends to manage and protect the system

# *Parts of a System Notice*

- Number
- Name
- Security classification
- Location
- Who it covers
- Types of records
- Authority for collection
- Purpose of system
- Routine uses: 3rd party disclosures
- Storage
- How information is retrieved
- Safeguards: Authorized users, physical and procedural safeguards
- Retention and Disposal
- System Manager(s) address
- Notification procedure
- Record access procedure
- Contesting record procedure
- Record source categories
- Exemptions



# *Sometimes Secret Records*



- Exempt Systems
  - Investigation Files
- Certificate of Confidentiality

# *No Secret Use of PA Records*

- Disclosure with consent of individual
  - Get in writing, as narrow as appropriate
- Disclosure without consent of individual
  - 12 provisions
    - (#3 - #12, must keep account, including: Name and address of person/agency to whom disclosure is made, date, nature and purpose of account)

# *12 Provisions of Disclosure*

- Employees with legitimate “*Need to Know*”
- Required under FOIA
- Routine Use (not mandatory)
- Bureau of Census
- Statistical Use (Can’t identify individual)
- National Archives
- Civil or criminal law enforcement
- Compelling circumstances affecting health or safety of individual (must be justified)
- House of Congress (oversight capacity)
- Comptroller General (GAO activities)
- Court Order (Subpoena signed by judge)
- Consumer reporting agency

# *Accounting of Disclosures*



- When the request cites the Privacy Act we must keep a record of:
  - date, nature, and purpose of each disclosure,
  - name and address of the person or agency to whom the disclosure is made.

## *Social Security No.*

- May collect - only where legally required
- Upon collection, must state whether:
  - disclosure is mandatory or voluntary,
  - by what statutory or other authority such number is solicited, and
  - what uses will be made of it

# *Notification Statement*

- Questionnaires that collect information covered by the Privacy Act must have the following

## Privacy Act Notification Statement

- 1 Government Authorization (Statue or Exec. Order)
- 2 Purpose of information collection
- 3 Routine uses for information disclosure
- 4 Is the request voluntary or mandatory
- 5 What effect, if any for not providing information

# *Right to See and Correct Data*

- Control over degree of information government collects on individual
  - Right to access (except for exemptions)
    - System Manager must reasonably satisfy themselves of an individual's identity
  - Right to amendment
    - May change only factual information
  - Right to appeal denial of amendment

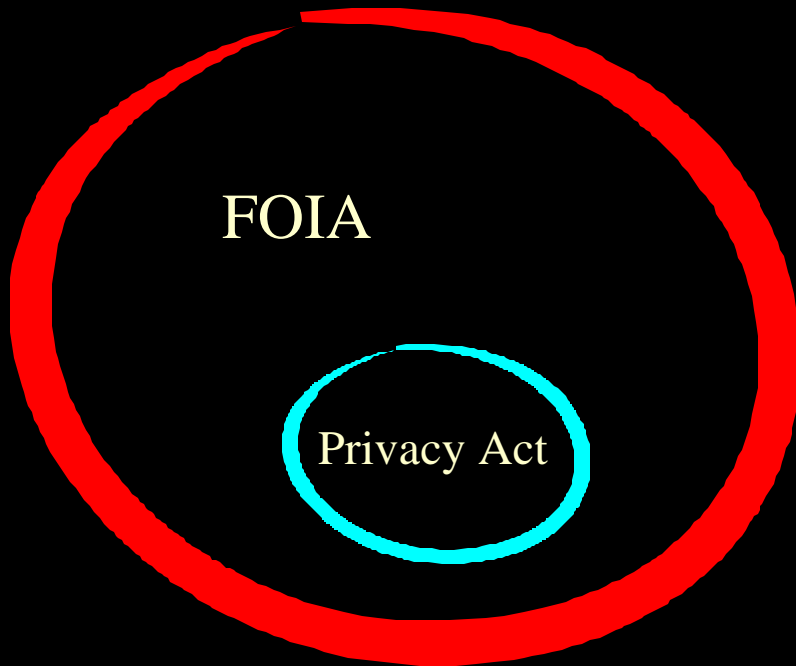
# *Safeguards*



- Collect information from individual, to greatest extent possible
- Establish appropriate administrative, technical and physical safeguards to insure security and confidentiality
- Do risk analysis every 3 years or less



# *Relationship to Freedom of Information Act (FOIA)*



- FOIA: 3rd party requests
- Privacy Act: Individual's request

# *Relationship to Freedom of Information Act (FOIA)*

- FOIA Exemption 6 (Personal Privacy)
  - Parts of “personal and medical files and similar files” may be withheld if disclosure “would constitute a clearly unwarranted invasion of personal privacy”
  - Must consider personal privacy interest of a living person balanced against the public interest

# *Supervisor's Notes*

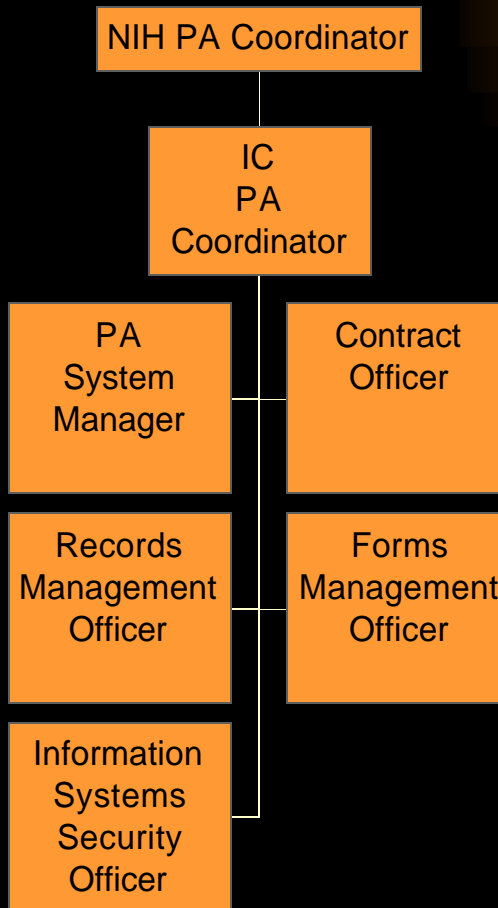
- They are NOT agency records when:
  - Personal property of supervisor only
  - Never shared with others (i.e, not circulated)
  - Never passed to replacement supervisor
  - memory joggers only
  - no official uses (i.e., not required by agency)

# *Supervisor's Notes*



- Considered part of employee's personnel record (agency record) when:
  - Used as basis for employment action
  - Otherwise treated as official Agency records

# *Key Players in NIH Privacy Act*



# *IC Privacy Act Coordinator*



- Advises IC on PA issues
- Prepares bi-annual PA report
- Coordinates with NIH PA Officer

# *System Manager Responsibilities*



- Must know where records are located
- Staff Training: inform users
- Security: enforce safeguards
- Approve/deny access
- Track access and amendments to records
- Ensure records are complete, accurate, timely and relevant

# *System Manager Responsibilities*



- Monitor contractor compliance
- Follow NIH Records Schedule
- Ensure data collection forms include Notification Statement
- Report Requirements: annual updates/reports



# *Records Management Officer*



- All records must be scheduled
  - Knowledgeable of records retention and disposition
  - Knowledgeable of record medium (usable and readable for life of record)

# *Forms Management Officer*



- Advises when data collection form is governed by the PA
- Advises when form requires PA Statement
  - Coordinates with PA Coordinator on accuracy of statement
  - Special requirements for use of SSN

# *Contract Officer*



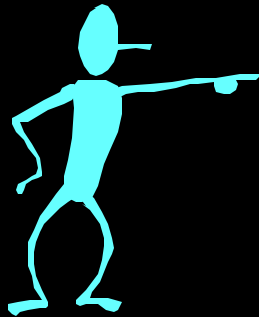
- Decide when PA applies to work scope
- If PA applies, contract must:
  - State that PA applies
  - List disclosures contractor may make
  - Contain a list of the established safeguards
  - Include procedures to monitor contractor compliance (and identify the Govt. Monitor)
  - Include copy of the System Notice

# *Information Systems Security Officer*



- Advises IC on security standards (e.g., encryption)
- Knowledgeable of IC systems on electronic media

# *When are Grants Files PA Records?*



- When they are under possession and control of the Federal Government

# *Access by Grantee Institutions*



- PI gets full access to his/her grant file
- Grantee Institution gets access
  - (usually covered as one of the “Routine Uses”)
- All others -- must do FOIA request
  - May release: title of the project, the grantee institution, principal investigator, abstract, and amount of the award.

# *Computer Systems/Files*



# *Computer Data: Not a Record?*

- Court Decision: “That employees could use data from [computer system] in combination with other information to draw inferences about [an employee’s] job performance..., does not transform the [computer system] files into records.”
- Reflects only indirectly on any quality or characteristic of employee



# *Civil Remedies*

- Applies to agency - not individual
- Plaintiff must first exhaust administrative remedies
- Plaintiff must show
  - a violation of the PA
  - suffering an adverse effect as result
  - agency was direct or proximate cause of effect
  - violation was intentional or willful

# *Criminal Remedies*

- Fine up to \$5000 + court costs
  - If an officer or employee of agency knowingly releases records improperly to a person not entitled to receive
  - Willfully maintains PA system without publishing in Fed Reg
  - Knowingly requests or obtains record about individual under false pretenses

# *Summary*

- Must be published System of Records
- Maintain in accordance with FR Notice
- Internal release when valid “Need-to-Know”
- Individuals have right to see and amend
- Supervisor’s notes covered = agency action
- Grants records covered = under Govt control
- PI & Grantee Institution get access to grant file